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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/726,818	11/30/2000	Timothy Del Sol	00-473	2231
20306	7590	08/23/2004	EXAMINER	
MCDONNELL BOEHNEN HULBERT & BERGHOFF LLP			VU, NGOC K	
300 S. WACKER DRIVE			ART UNIT	
32ND FLOOR			PAPER NUMBER	
CHICAGO, IL 60606			2611	

DATE MAILED: 08/23/2004

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Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

09/726,818

**Applicant(s)**

SOL ET AL.

**Examiner**

Ngoc K. Vu

**Art Unit**

2611

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 11 June 2004.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-6 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3,5 and 6 is/are rejected.
- 7) ☒ Claim(s) 4 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

## DETAILED ACTION

### *Response to Arguments*

1. Applicant's arguments with respect to claims 1-3, 5 and 6 have been considered but are moot in view of the new ground(s) of rejection.

### ***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. Claim 1-3, 5 and 6 are rejected under 35 U.S.C. 102(e) as being anticipated by Roeck et al. (U.S. 6,594,305 B1).

Regarding **claim 1**, Leano discloses in a data-over-cable system, a method for establishing communications between a network client device and a network device (*method relates to transmitting data in cable television network system between cable modems and a cable modem termination system (CMTS) – see col. 1, lines 15-21*); the method comprising:

- a) dividing a dynamic range of the network client device into a plurality of regions (*CMTS schedules time slots on the upstream channel as IMTS so that a cable modem desiring to come on line can do so – see col. 6, lines 41-44; col. 7, lines 9-12*);
- b) initiating at least one initial ranging in at least one of the regions using a certain power level (*initial ranging for a cable modem occurs when a cable*

*modem in an operating cable plant is powered on by a user. Once turned on, the cable modem waits for an initial maintenance opportunity from the CMTS. Thus, the cable modem performs initial ranging using at a certain power level at step 302 – see col. 7, lines 6-12 and 23-26 and figure 3A);*

- c) determining if a range response message is received from the network device *(the cable modem determines whether a RNG-RSP message from the CMTS has been received at step 306 – see col. 7, lines 28-31 and figure 3A);*
- d) adjusting the power level *(the cable modem local power level is adjusted at step 312 – see figure 3A and col. 7, lines 47-49) and reinitiating step b) and c) (going to step 302 after going thru step 312 as shown in figure 3A) till a range response message is received (until a RNG-RSP message is received at step 316 – see figure 3A).*

Regarding **claim 2**, Roeck discloses that the network client device is a cable modem (see abstract and figures 1-3A).

Regarding **claim 3**, Roeck discloses that the network device is a cable modem termination system (see abstract and figure 1-3A).

Regarding **claim 5**, Roeck discloses a computer readable medium having stored therein instructions *(i.e. software or program)* for causing a processing unit to execute the steps of the method of claim 1 (see col. 5, lines 48-56; col. 14, lines 24-27 and 44-48).

Regarding **claim 6**, Roeck shows that the step of initiating at least one initial ranging includes sending a range request message *(transmitting RNG-REQ message to CMTS at step 302 – see figure 3A).*

***Allowable Subject Matter***

4. Claim 4 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

The prior art of record does not teach or fairly suggest the step of dividing the dynamic range of the network client device includes dividing the dynamic range of a transmitter of the network client device by the dynamic range of a receiver of the network device.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ngoc K. Vu whose telephone number is 703-306-5976. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christopher Grant can be reached on 703-305-4755. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Ngoc K. Vu  
Examiner  
Art Unit 2611

August 20, 2004